IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY SIXTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

**THE HON'BLE MR JUSTICE ELIPE DHARMA RAO**

**WRIT PETITION NO : 9491 of 2005**

Between:

Kadiam Jagapathi Satyanarayana

S/o Narayana Murthy, Hindu, aged 53 years, Agriculture , R/o Tellakuppa, I. Polavaram Mandal, East Godavari District.

**..... PETITIONER**

AND

1. Government of Andhra Pradesh, rep. By its Secretary, Irrigation and Command Area Development Department, Secretariat Buildings, Hyderabad.

2. Superintending Engineer, Irrigation Circle, Dowlaiswaram, East Godavari District.

3. Executive Engineer, Irrigation and Command Area Department, Godavari Central Division, Dowlaiswaram, East Godavari District.

4. Deputy Executive Engineer, Irrigation and Command Area Department, Amalapuram, East Godavari District.

5. District Collector, East Godavari District, Kakinada.

6. Assistant Engineer, Irrigation, Muramalla, East Godavari District.

**.....RESPONDENTS**

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction, particularly one in the nature of writ of Mandamus declaring the inaction of the respondents in not taking nay steps on the complaint submitted by the petitioner requesting to take action against the persons who are

making illegal construction (local usage name (NACHU) in the Kesanakurru main canal and also drawal of water from the said canal to the aqua fields as illegal, arbitrary and violative of Fundamental Rights and consequently direct the respondents to remove the unauthorized illegal constructions of Nachu in the said canal and also to stop the unauthorized drawing of water by the third parties to their aqua fields from the said canal and have a regular vigil to prevent such illegal activities and pass such other order or orders as the Hon'ble Court deems fit and proper in the circumstances of the case.

**Counsel for the Petitioner: MR.T.V.S.PRABHAKARA RAO**

**Counsel for the Respondents: GP FOR IRRIGATION & COMM AREA DEV.**

**The Court at the stage of admission made the following :**

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***ORAL ORDER***

Heard both sides.

In this Writ Petition, the petitioner is seeking a writ of Mandamus, declaring the inaction of the respondents in not taking any steps on the complaint submitted by the petitioner requesting to take action against the persons who are making illegal construction in the kasanakuru main canal and also drawal of water from the said canal to the aqua fields as illegal, arbitrary and consequently direct the respondents to remove the unauthorized illegal constructions of Nachu in the said canal and also to stop the unauthorized drawing of water by the third parties to their aqua fields from the said canal and have a regular vigil to prevent such illegal activities.

The learned counsel appearing for the petitioner submits that in the entire area covered under I. Polavaram Mandal, East Godavari District, majority of the lands have been converted into aqua fields and the respondents having known the fact that these unauthorized aqua fields are in existence and the drawal of the water from the main canal unauthorizedly by opening vents and raising height of the nachu, they are not taking any action.

The question of maintaining the level of water or supply of water is prerogative of the Government and the authorities have to take a decision having regard to the facts and circumstances of the case and that cannot be decided in a writ petition as it requires recording of evidence. Therefore, the only course open to the petitioner is to assail the correctness or otherwise of the action of the

respondents in a suit before an appropriate forum.

Accordingly, the Writ Petition is dismissed. No order as to cots.

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ELIPE DHARMA RAO,J

DATED: 26.04.2005

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To

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6. Assistant Engineer, Irrigation, Muramalla, East Godavari District.

7. Two CCs to G.P. for Irrigation and Command Area Development, High Court of A.P., Hyderabad. (OUT)

8. Two CD copies.